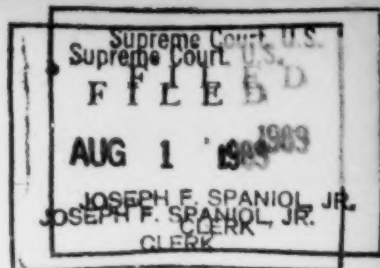


EDITOR'S NOTE:

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BETTER COPY CAN BE OBTAINED, A NEW FICHE  
WILL BE ISSUED.

89-3 06 (1)



NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

Malcolm T. Riley, III, Petitioner

vs.

United Parcel Service, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
THIRD CIRCUIT

Malcolm T. Riley, III , pro se  
12 Stalwart Drive  
Newark, DE. 19713  
(302)368-2776

45 ppx



## QUESTIONS PRESENTED

1. Did the District Court improperly apply Title VII evidentiary standards and improperly conclude that the Petitioner did not establish that the Respondent's reasons for discharge were pretextual?
2. Did the District Court improperly conclude that the Respondent discharged the Petitioner solely because of his work record?
3. Did the District Court improperly conclude that there was no evidence of disparate treatment towards the Petitioner and that race was not a determining factor in the Petitioner's discharge?
4. Did the District Court improperly enter judgement in favor of the Respondents?



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1. THE DISTRICT COURT IMPROPERLY APPLIED TITLE VII EVIDENTIARY STANDARDS AND IMPROPERLY CONCLUDED THAT THE PETITIONER DID NOT ESTABLISH THAT THE RESPONDENT'S REASONS FOR DISCHARGE WERE PRETEXTUAL.	
2. THE DISTRICT COURT IMPROPERLY CONCLUDED THAT THE RESPONDENT DISCHARGED THE PETITIONER SOLELY BECAUSE OF HIS WORK RECORD.	
3. THE DISTRICT COURT IMPROPERLY CONCLUDED THAT THERE WAS NO EVIDENCE OF DISPARATE TREATMENT TOWARDS THE PETITIONER AND THAT RACE WAS NOT A DETERMINING FACTOR IN THE PETITIONER'S DISCHARGE.	
4. THE DISTRICT COURT IMPROPERLY ENTERED JUDGEMENT IN FAVOR OF THE RESPONDENTS.	



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COURT OF APPEALS FOR THE THIRD  
CIRCUIT - **EXHIBIT A**

ORDER SUR PETITION FOR REHEARING - **EXHIBIT B**

OPINION - DISTRICT JUDGE JOSEPH J. FARNAN  
U.S. DISTRICT COURT, DISTRICT OF  
DELAWARE - **EXHIBIT C**





## TABLE OF AUTHORITIES

Bellissimo v. Westinghouse Electric Corp. , 764 F2d 175 (1985).

McDonnell Douglas Corp. v. Green,  
411 U.S. 792 (1973).

Smithers v. Bailar, 629 F2d 892,898  
(3rd Cir. 1980)



OPINIONS BELOW

A Memorandum Opinion was issued by the Honorable Joseph J. Farnan (United States District Court for the District of Delaware) on June 30, 1988. A true and correct copy of same is annexed hereto as Exhibit "C". An order affirming this Judgement was issued by the United States Court of Appeals for the Third Circuit on April 3, 1989. A true and correct copy of same is annexed hereto as Exhibit "A".



STATUTE INVOLVED

This case involves Title VII of the  
Civil Rights Act of 1964, 42 U.S.C.A.  
Sections 1981 and 2000 (e).

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### GROUNDS FOR JURISDICTION

On April 3, 1989, the United States Court of Appeals for the Third Circuit denied the Petitioner's Request for a Rehearing en Banc and affirmed the Judgement Order of the District Court for the District of Delaware. A true and correct copy of this order is annexed hereto as Exhibit "B".





## STATEMENT OF THE CASE

The Petitioner brought this action before the United States District Court in the District of Delaware.

After a bench trial held before the Honorable Judge Joseph J. Farnan on September 21 through 23 of 1987, a Judgement was entered by Judge Farnan in favor of the Respondent. After a timely appeal to the Third Circuit Court of Appeals, the Lower Court Judgement was affirmed on April 3, 1989. A request for Rehearing en Banc was filed on April 17, 1989 and was denied on May 3, 1989 wherein the original Judgement was affirmed. These documents are attached hereto as Exhibits "A", "B", and "C".



### REASONS FOR GRANTING WRIT

The District Court Judge improperly applied Title VII evidentiary standards and improperly concluded that the Petitioner did not establish that the Respondent's reasons for discharge were pretextual.

The District Court improperly concluded that the Respondent discharged the Petitioner solely because of his work record.

The District Court improperly concluded that there was no evidence of disparate treatment towards the Petitioner and that race was not a determining factor in the Petitioner's discharge.

The District Court improperly entered judgement in favor of the Respondents.



The District Court Judge presiding over this case relied on a myriad of inaccurate information when arriving at his decision. The Judge did not take into account all of the information available to him and he put a substantial amount of emphasis on data that the Respondent admittedly could not substantiate. On more than several occasions, the Judge overlooked evidence despite documentation supporting the same.

Additionally, the Petitioner was subject to harsher discipline and was treated differently than other similarly situated employees solely because of his race and color.

As can be vigorously substantiated by volumes of Court transcripts and depositions, the Respondent had only two weeks in which to discharge the Petitioner or the statute of limitations would have



rendered information upon which the Respondent heavily relied useless. A medically documented case of strep throat coupled with a lateness of less than two minutes do not separately or cumulatively constitute grounds for discharge unless the discharge was pretextual.

The Petitioner substantiated the fact that the Respondent intentionally lied to and misled the Equal Opportunity Employment Commission in their investigation of this claim. The Third Circuit Court of Appeals seemed to overlook this information as well as a multitude of other relevant data that is instrumental in understanding the particulars of the Respondent's unlawful actions against the Petitioner. The Respondent had no knowledge of information requested in the sets of interrogatories that the Petitioner





helped the EEOC to compose --however the previously sanitized information mysteriously reappeared when this case got to the District Court level. The Respondent had "no knowledge or records" of several key issues that would have definitely changed the outcome of the EEOC's proceedings.

The Petitioner also vigorously substantiated the fact that all disciplinary write-ups levied upon him were levied by temporary supervisors -- not by the Petitioner's regular supervisor who was on vacation when all of the unwarranted disciplinary measures necessary for discharge were imposed.

Ambiguous charges about the Petitioner's conduct were entered into his personnel folder--regardless of the illegitimacy of the charges. At the eleventh hour, the Respondent used



shotgun techniques for discipline revolving around issues that were trivial. The Respondent repeatedly "dressed up" trivialities to appear as major acts of intentional misconduct to a casual observer, however when company policy--the standard that **everyone** was supposed to be subjected to--was examined, the issues in question were not even grounds for discipline. On numerous occasions, the Respondent cited progressive discipline even though the Petitioner was never guilty of the infractions of which he was accused.

The Petitioner was subject to disciplinary write-ups that he had no idea even existed--let alone had accumulated--until years after his racially motivated discharge from employment.

The Petitioner is prepared to show



clear, concise, examples of disparate treatment, similarly situated caucasian employees that were treated more favorably than he, and clear pretextual reasons for his eventual discharge.

This case involves at least six and one-half years of litigation. An objective approach to the specifics and details contained in the totality of information available will render a litany of facts that show that the reasons for discharge were pretextual and were racially motivated.

In McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973) the Supreme Court announced the manner in which discrimination must be established:

(1) the employee must show a prima facie case of discrimination, (2) once a prima facie case has been shown, the burden shifts to the employer to articulate some non-discriminatory reason for the action,



and (3) if such a reason legitimately proffered, the employee bears the burden of demonstrating that the employer's reason is a mere pretext.

It is asserted by the Petitioner that a prima facie case was clearly established. The employer failed to prove a "non-discriminatory" reason for the Petitioner's discharge. The Petitioner demonstrated his competence at his employer's business and further demonstrated that similarly-situated employees were treated disparately by the Respondent.

In Bellissimo v. Westinghouse Electric Corp., 764 F2d 175 (1985) establishes the standard by which the Plaintiff must prove that the Defendant discriminated against him. This is by





way of a "but for" test. The "but for" test does not require a Plaintiff to prove that the discriminatory reason was the determinative factor, but that it was a determinative factor. See also Smithers v. Bailar, 629 f2d 892, 898 (3rd cir. 1980).

Under all of these circumstances, this Petitioner respectfully prays that this Honorable Court review these contentions and conclude that **at least** some additional investigation into or a careful re-evaluation of existing documents and Court Records be performed so that the specifics surrounding the Respondent's unlawful discharge of the Petitioner can be clearly understood. Careful study of the details surrounding all of these issues is **imperative** so that the "smokescreen" that the Respondent used will be dissipated.

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The District Court Judge improperly applied Title VII evidentiary standards, improperly concluded that the Petitioner did not establish that the Respondent's reasons for discharge were pretextual, improperly concluded that the Respondent discharged the Petitioner solely because of his work record, improperly concluded that there was no evidence of disparate treatment towards the Petitioner, that race was not a determining factor in the Petitioner's discharge, and the Court improperly entered judgement in favor of the Respondents.



### CONCLUSION

For all of the reasons above expressed, the Petitioner, Malcolm T. Riley, III respectfully prays that this Honorable Court grant Certiorari and other such relief as may be necessary and appropriate in the interest of justice.

Respectfully submitted,

---

Malcolm T. Riley, III, pro se



CERTIFICATE OF SERVICE

I, Malcolm T. Riley, III, hereby  
certify that three true and correct  
copies of the foregoing Petition for a  
Writ of Certiorari have been served upon:

Martin Wald, Esquire  
c/o Schnader, Harrison, Segal and Lewis  
1600 Market Street, Suite 3600  
Philadelphia, Pennsylvania 19103

via United States Mail.

---

Malcolm T. Riley, III, pro se





Office of the Clerk  
Telephone  
215 597-2995

UNITED STATES COURT OF APPEALS

Sally Mrvos  
Clerk  
Direct Dial-  
597-8465

For the Third Circuit  
21400 United States Courthouse  
801 Market Street  
Philadelphia 19106-1790

May 11, 1989

Mr. John R. McAllister, Jr., Clerk  
U. S. District Court  
Lock Box 18, Federal Bldg.  
844 King St.,  
Wilmington, DE. 19801

Re: Malcolm T. Riley, III, Appellant  
vs. United Parcel  
No. 88-3482  
(D.C.Civ.No.83-811)

Dear Clerk:

Enclosed is a certified copy of  
the judgment order in the above-entitled  
case(s). The certified judgment order is  
issued in lieu of a formal mandate and is  
to be treated in all respects as a mandate.

Exhibit "A"



(X ) We return herewith the  
certified record in the case(s).

( ) We release herewith the  
certified lest in lieu of the  
record.

Kindly acknowledge receipt for same  
on the enclosed copy of this letter.

Counsel are advised of the issuance  
of the mandate by copy of this letter. A  
copy of the certified judgment is also  
enclosed showing costs taxed, if any.

Very Truly yours,

M. Elizabeth Ferguson  
Chief Deputy Clerk

bj:  
Enclosure

cc: ✓ Mr. Malcolm T. Riley, III  
Martin Wald, Esq.

DC-JO



UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

No. 88-3482

---

MALCOLM T. RILEY, III  
Appellant

vs.

UNITED PARCEL SERVICE

---

On Appeal From the United States District  
Court For the District of Delaware  
(D.C. Civil Action No. 83-811)

District Judge: Honorable Joseph J.  
Farnan, Jr.

---

Submitted March 27, 1989

BEFORE: STAPLETON, GREENBERG, AND SCIRICA,  
Circuit Judges

---

JUDGEMENT ORDER

After consideration of the  
contentions raised by appellant, it is



ORDERED AND ADJUDGED that the  
judgment of the district court be and is  
hereby affirmed.

Costs taxed against appellant.

By the Court,

Walter K. Stapleton  
Circuit Judge

ATTEST:

Sally Mrvos  
Clerk

Dated: Apr 3 1989

Certified as a true copy and issued in  
lieu of a formal mandate on May 11, 1989

Test: M. Elizabeth Ferguson  
Chief Deputy Clerk, United States Court of  
Appeals for the Third Circuit.

COPY





Office of the Clerk                      Telephone  
215 597-2995  
UNITED STATES COURT OF APPEALS

Sally Mrvos  
Clerk                                      Direct Dial-  
For the Third Circuit  
21400 United States Courthouse      597-8465  
601 Market Street  
Philadelphia 19106-1790

May 3, 1989

✓  
Mr. Malcolm T. Riley, III

Martin Wald, Esq.

Re: Malcolm T. Riley, III, Appellant  
vs. United Parcel Service  
No. 88-3482

Dear Mr. Riley and Counsel:

Enclosed herewith is conformed copy  
of order entered by the Court today in  
the above-entitled case.

Very truly yours,

M. Elizabeth Ferguson/ch  
Chief Deputy Clerk  
Direct Dial - 597-3143

Exhibit "B"



UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

No. 88-3482

---

MALCOLM T. RILEY, III  
Appellant

vs.

UNITED PARCEL SERVICE

---

SUR PETITION FOR REHEARING

BEFORE; GIBBONS, Chief Judge, SEITZ,  
HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON,  
MANSMANN, GREENBERG, HUTCHINSON, SCIRICA,  
COWEN, and NYGAARD, Circuit Judges

The petition for rehearing filed by  
appellant in the above-entitled case having  
been submitted to the judges who  
participated in the decision of this  
Court and to all the other available  
circuit judges of the circuit in regular  
active service, and no judge who concurred



in the decision having asked for rehearing,  
and a majority of the circuit judges of  
the circuit in regular active service not  
having voted for rehearing by the court  
in banc, the petition for rehearing is  
denied.

By the Court,

Walter K. Stapleton

Circuit Judge

Dated: May 3, 1989



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MALCOLM T. RILEY, II, :  
:   
Plaintiff, :   
: Civil Action No.   
: 83-811-JJF   
v. :   
:   
UNITED PARCEL SERVICE, :   
:   
Defendant. :

---

David S. Lank, Esquire, of Theisen, Lank,  
Mulford & Goldberg, Wilmington, Delaware.  
Attorney for Plaintiff.

James J. Woods, Jr., Esquire, of Connolly,  
Bove, Lodge & Hutz, Wilmington, Delaware.  
Martin Wald, Esquire, of Schbader, Harrison,  
Segal & Lewis, Philadelphia, Pennsylvania.  
Attorneys for Defendant.

---

MEMORANDUM OPINION

June 30, 1988

Wilmington, Delaware'

Exhibit "C"





Joseph J. Farnan, Jr.  
FARNAN, District Judge

Plaintiff, Malcolm T. Riley, III,  
brought this action for damages allegedly  
suffered due to his final discharge from  
his employment with the defendant, United  
Parcel Service. Plaintiff contends that  
he was discharged on the basis of his race.  
Plaintiff's cause of action arises under  
42 U.S.C. Sections 1981 and 2000(e) and  
the Court has subject matter jurisdiction  
under 28 U.S.C. Sections 1331 and 1343.

The Court conducted a three day bench  
trial in this action and, following the  
conclusion of trial, reviewed proposed  
findings of fact and conclusions of law  
submitted by the parties. This opinion  
constitutes the Court's Findings of fact  
and conclusions of law submitted by the  
parties. Conclusions of Law under  
Rule 52(a) of the Federal Rules of Civil  
Procedure.

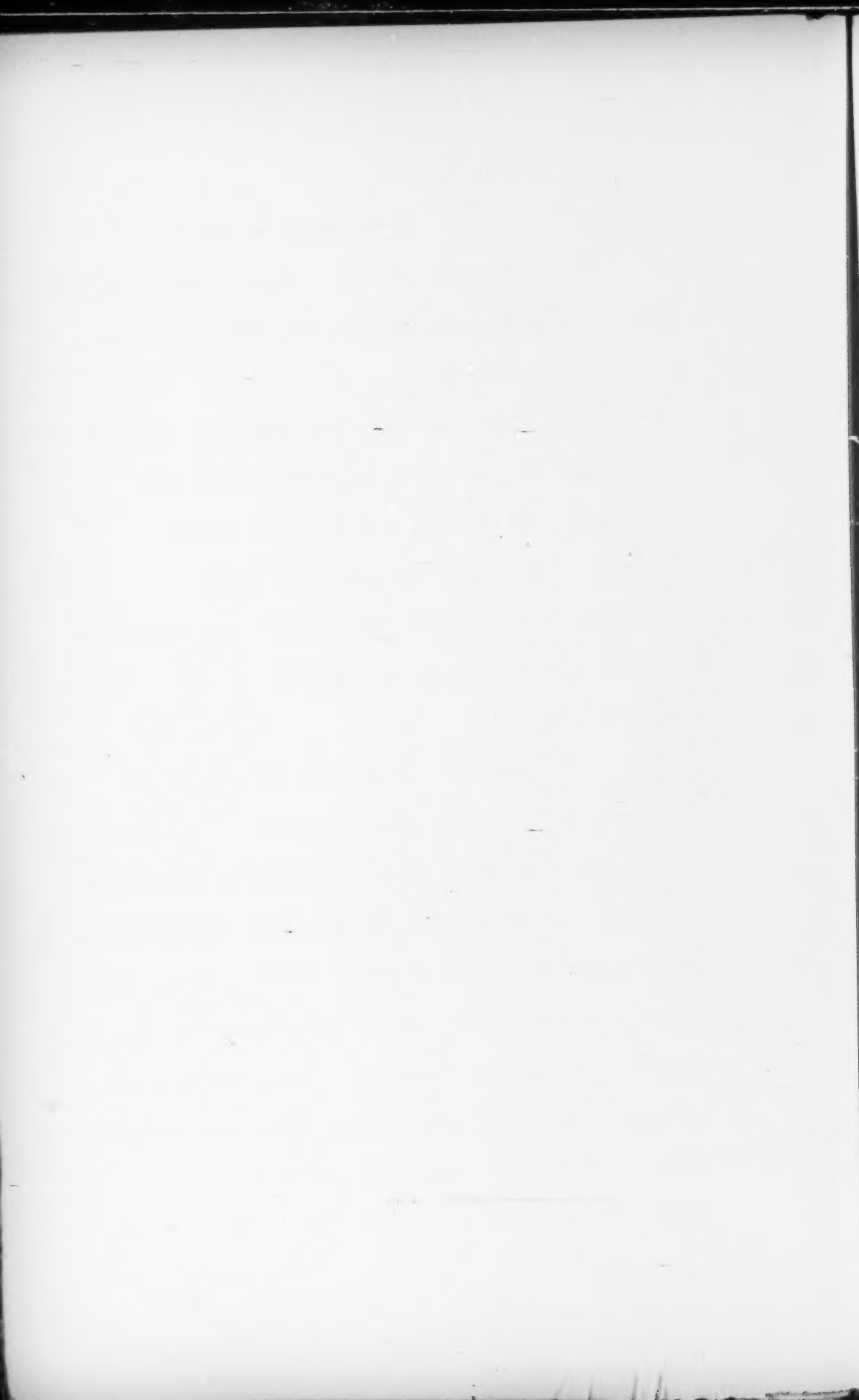


## FINDINGS OF FACT

1. Plaintiff is a black citizen of the United States and a resident of the State of Delaware.

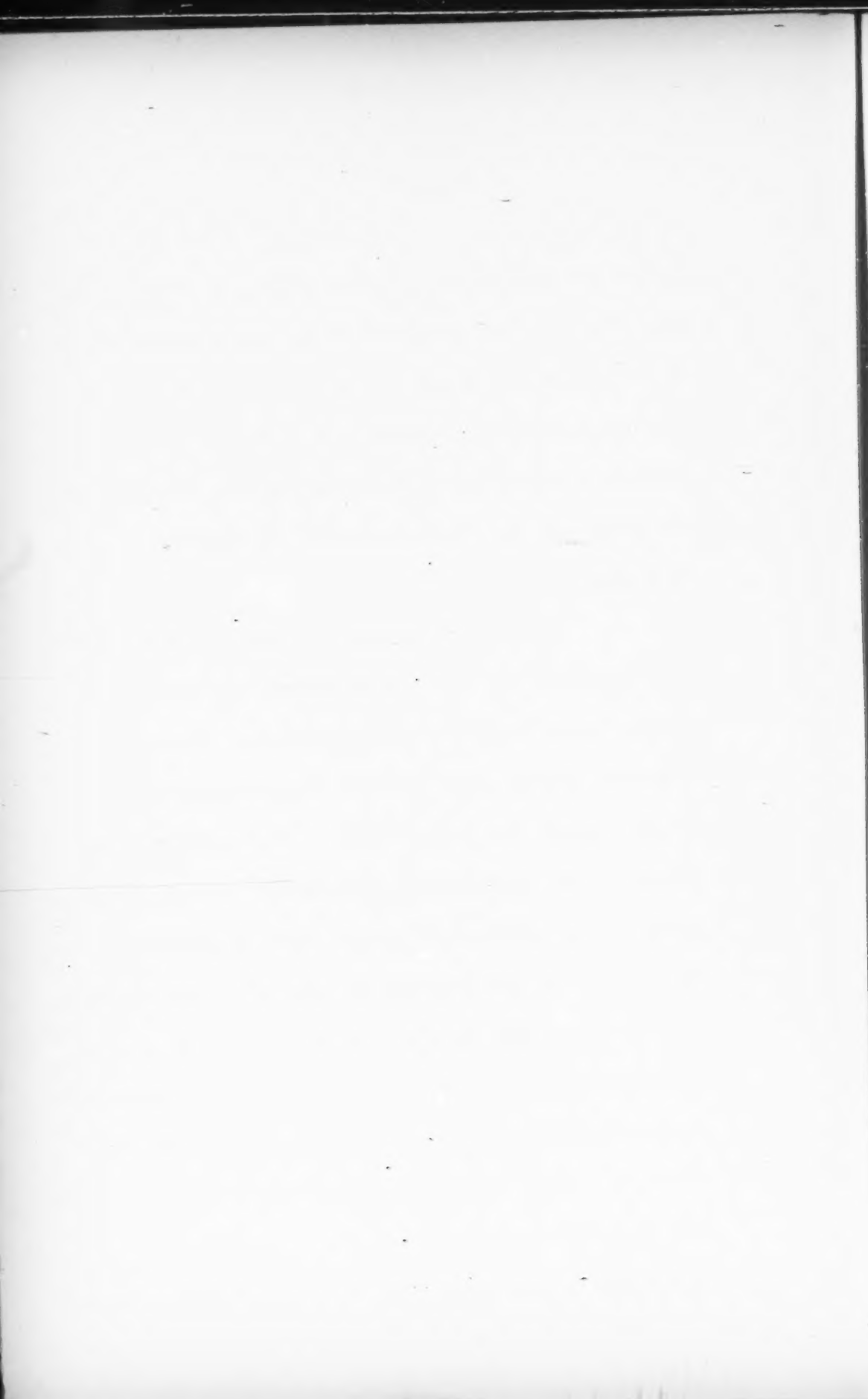
2. UPS was and is engaged in the business of transfer and delivery of packages and has been, at all times relevant to this lawsuit, an employer engaged in an industry affecting commerce within the meaning of 42 U.S.C. section 2000e(b)(g) and (h).

3. UPS hired Riley on or about September 2, 1980, as a parcel unloader and sorter during the "pre-Christmas busy season." At the end of the pre-Christmas busy season in December, 1980, plaintiff was laid off and placed in "on-call status" from January to April, 1981. As an on-call employee, Riley was called by UPS when he was needed for work on a particular shift. In April, 1981, Riley



attained the status of a regular <sup>part</sup> full-time employee. The plaintiff's employment with UPS was terminated on April 16, 1982. During his employment with UPS, Riley either worked at the defendant's facilities in Wilmington, Delaware or in Newark, Delaware.

4. As an employee at UPS, plaintiff was covered by the provisions of the Collective Bargaining Agreement between UPS and Local 326 of the International Brotherhood of Teamsters. The Collective Bargaining Agreement provided, in relevant part, "The employer shall not discharge nor suspend any employee without just cause, but in respect to discharge shall give at least one (1) warning notice of a complaint against such employee to the employee in writing, and a copy of the same to the Union and Job Steward affected. . . . An employee's warning notice would only remain



in effect for a period of nine months from the date it was issued. For a limited number of serious offenses, such as proven theft or dishonesty, an employee could be discharged without first receiving a warning notice.

5. Riley worked as an unloader for approximately his first two months at UPS. As an unloader, Riley was responsible for unloading packages from a delivery truck and placing the packages on a set of rollers. The package would then "roll" up to the sorter, who was the next person to handle the package. The sorters were required to take the package, read the address, and then place the package in one of a series of bins or belts based on the destination of the package.

6. UPS employs a system of "progressive discipline" involving informal and formal disciplinary measures for





workers who violate company work rules or procedures. The possible disciplinary measures for a given infraction include informal verbal counselings, verbal warnings, write-ups placed in an employee's file, center level hearings, Official Warning Letters, Suspensions, Final Warnings, and Discharge. UPS considers an employee's entire work record in determining appropriate discipline for a given infraction.

7. Malcolm Riley was constantly disciplined by managers and supervisors during his brief employment with UPS. Riley received numerous informal verbal counselings from supervisors concerning his work methods and level of performance. On one occasion, Riley's immediate supervisor, Carol Mack, verbally admonished him for urinating against a wall at the UPS facility when a bathroom was located within



twenty-five feet.

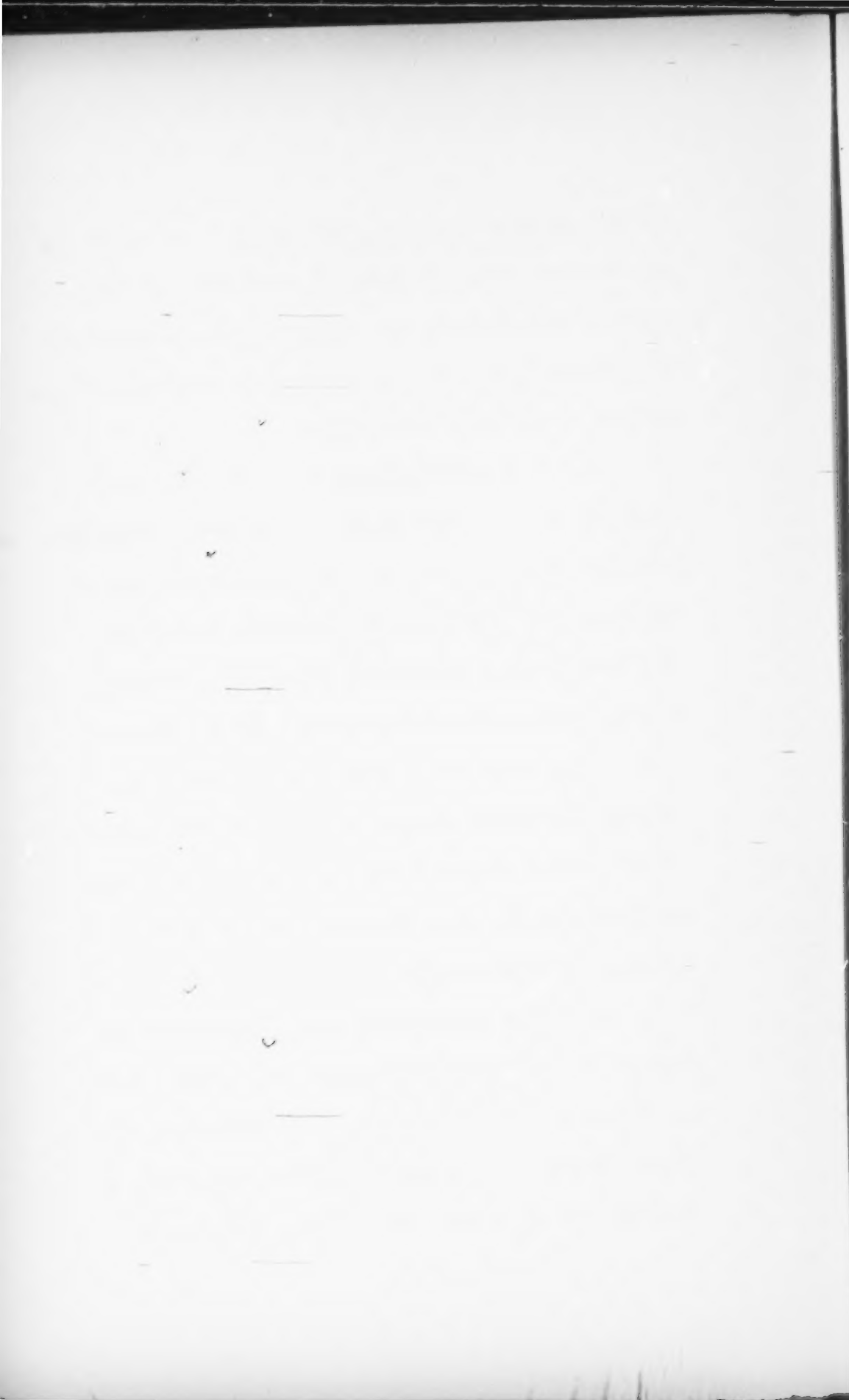
8. During his approximate twenty month employment at UPS, Riley received a total of forty-eight write-ups for violations of UPS rules and procedures from eight separate supervisors. These write-ups included the following infractions: lateness, excessive absenteeism, failing to call in and report an absense in advance of the shift start, slow sorting, improper sorting methods, poor attitude, attempting to intentionally slow down the work rate, improper package handling, smoking in an unauthorized area, unacceptable level of missorts of packages, and intentionally throwing packages. On at least three occasions, Riley was instructed by his supervisor to stand at a 45 degree angle to the sort belt and sort the packages to his right. Defendant's exhibit 6, 13, and 24. UPS had determined that this was the



safest means to sort packages. On each occasion, the plaintiff returned to his work station and, in complete disregard of his supervisor's instructions, began sorting packages to his left side.

9. Plaintiff received an Official Warning Letter for unacceptable attendance and for failure to follow instructions on February 5, 1981. Riley later received two additional Official Warning Letters for unacceptable attendance dated March 9, 1981, and July 17, 1981. Each warning letter informed Riley that further violation of UPS work rules would subject him "to further disciplinary action, up to and including discharge."

10. The plaintiff was suspended on August 8, 1981 and October 13, 1981, for unacceptable attendance. On February 25, 1982, Riley was suspended for throwing a package at a truck unloader. Riley was



also issued a Final Warning Letter on this date which informed him that any failure to follow company methods and procedures, or failure to follow a supervisor's instructions in the future, would result in his discharge.

11. On April 6, 1982, plaintiff reported to work late. On April 9, 1982, plaintiff was scheduled to start work at 4:30 a.m. but called in sick at 5:05 a.m. On April 13, 1982, Riley was again scheduled to work the 4:30 a.m. shift and called in sick at 4:25 a.m. UPS had instructed its employees to call in at least one half hour before the start of their shift if they would be unable to report to work. On April 7 and April 8, 1982, Riley missorted an unacceptable number of packages because he was not reading the entire address label as he had been instructed by his supervisors.

12. On April 14, 1982, UPS reviewed





Riley's complete work record and based on this review, UPS discharged him because of his "continual failure to follow instructions, company methods and procedures, and overall work record."

13. Supervisors at UPS were given discretion by management in deciding whether to formally or informally discipline an employee. There is no evidence that supervisors abused their discretion in disciplining employees or that black employees were disciplined more harshly than white employees.

14. Plaintiff introduced evidence concerning the work records of three white employees in an effort to show disparate treatment. Those employees were Keith Krug, Charles Parks, and Mark Caine and all were unloaders at UPS. Caine also worked for a brief period as a sorter.

15. Neither Keith Krug nor Charles



Parks testified at trial and there was no testimony concerning their length of employment at UPS, their work performance, or their disciplinary record. However, plaintiff did introduce documents from the personnel files of Krug and Parks. These documents reveal that on March 30, 1982, Krug submitted a false timecard at the end of his shift. Parks had punched Krug's timecard at 4:45 p.m. even though Krug did not arrive at work until 5:30 p.m. Both Parks and Krug were discharged for this act on April 15, 1982. Both men appealed their discharge to the Metro Philadelphia Area Panel Grievance Committee, which is composed of an equal number of union and management representatives. The Grievance Committee reduced the discharges to suspensions, and both men returned to work on May 24, 1982. Parks was later given the opportunity to



work as a regular part-time package driver for UPS in April, 1983. Krug applied for a position as a driver in August, 1983, but the Court cannot find evidence in the record that he was ever promoted to that position.

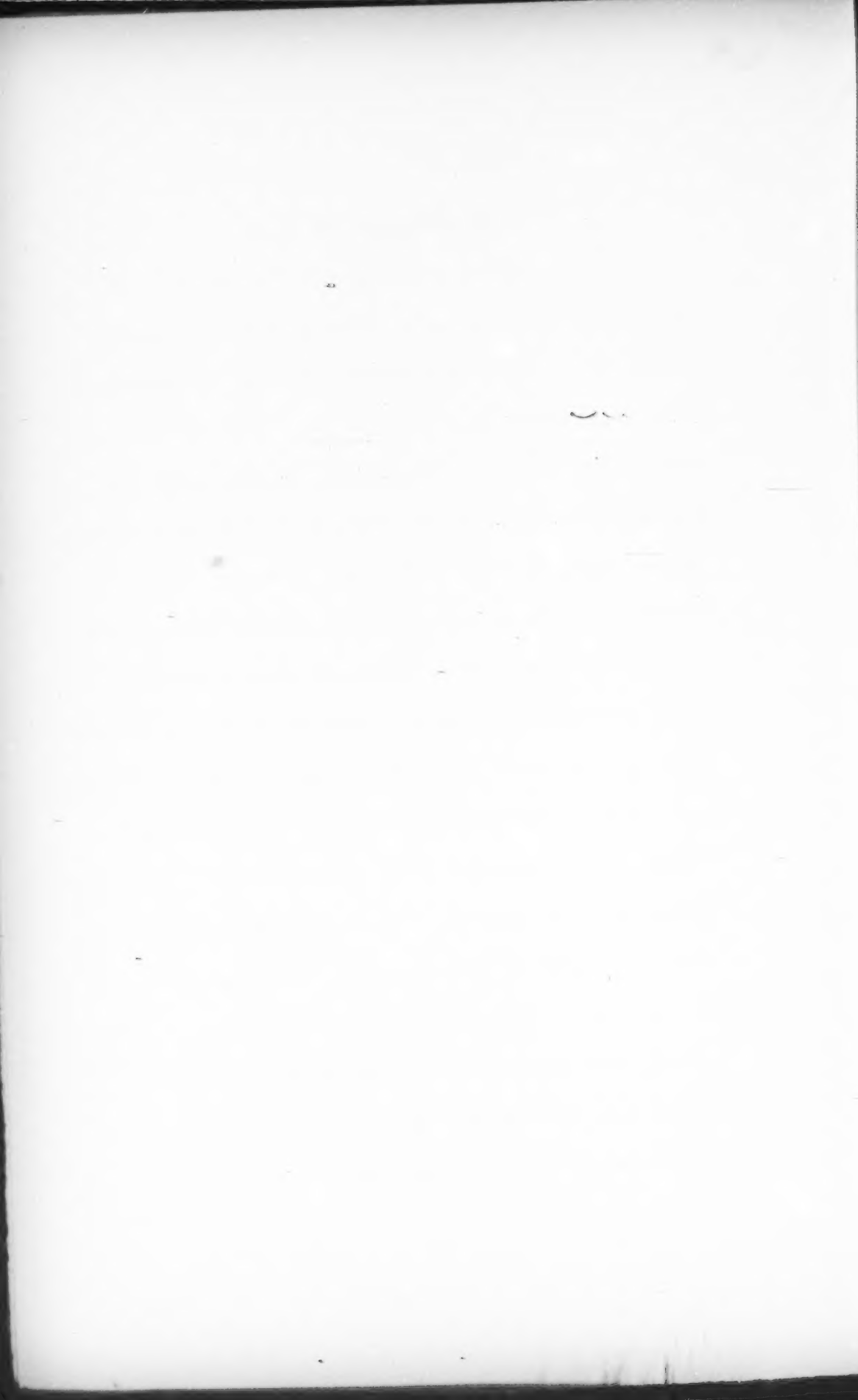
16. Mark Caine began working at UPS in March, 1980, and resigned in June, 1984. Like the plaintiff, Caine was a disciplinary problem for UPS. During his sixty-one months with UPS, Caine received thirty-five write-ups and five Official Warning Letters. Most of this disciplinary action concerned Caine's poor attendance and failure to properly call and report to his supervisor when he would be unable to report to work. During the time period when Riley and Caine were both employed, Riley committed forty-eight infractions of UPS work rules while Caine committed twenty-two infractions. Caine was never discharged and left UPS voluntarily. (See Kostink)



### CONCLUSIONS OF LAW

1. In this suit under Title VII of the Civil Rights Act, the plaintiff must prove by a preponderance of the evidence that his race was a "but for" cause for his termination. Lewis v. University of Pittsburgh, 725-F.2d 910, 915 (3d Cir.1983), cert. denied, 469 U.S. 892 (1984). In order to establish a prima facie case, the plaintiff must show that he was a member of a protected class, that he was discharged from a position for which he was qualified, and other employees not in the protected class were treated more favorably. Pollock v. A T & T, 794 F.2d 860, 864-65 (3d Cir. 1986); Pizzuto v. Perdue, Inc., 623 F.Supp. 1167, 1171 (D.Del. 1985). If the plaintiff establishes a prima facie case, the defendant must rebut the inference of discrimination by producing





evidence that the plaintiff was discharged for a legitimate, non-discriminatory reason. Worthy v. United States Steel Corp., 616 F.2d 698, 701 (3d Cir. 1980).

Once the defendant has articulated a legitimate, non-discriminatory reason for its action, the plaintiff must prove by a preponderance of the evidence that the defendant's reason is merely pretextual and that the defendant "intentionally discriminated against the plaintiff."

Belissimo v. Westinghouse Electric Corp., 764 F.2d 175, 180 (3d Cir. 1985).

2. The court concludes that Riley has established a prima facie case of racial discrimination. Riley is a black citizen who was discharged from his sorting position at UPS, a position for which he was at least minimally qualified, while it appears one white employee, Mark Caine, was not discharged from his position although



it appears he committed disciplinary offenses similar to plaintiff's, although Caine's offenses appear to be less in number and severity.

3. The Court concludes that defendant has articulated a legitimate non-discriminatory reason for the plaintiff's discharge, which is that plaintiff was discharged for good cause because of his poor work record and his long history of disciplinary violations which occurred during his employment at UPS.

4. As for the work records of Krug and Parks, the Court cannot conclude, based on the evidence presented, that these employees were treated more favorably than Riley by UPS. The Court has no evidence regarding the length of their employment or their work record prior to the single incident that was discussed at



trial, and there was no evidence or testimony concerning the rationale adopted by the Metro Philadelphia Area Panel Grievance Committee when it reduced UPS's discharge of Krug and Parks to a suspension. Therefore, the Court concludes on the record before it that the work records of Krug and Parks were not comparable to the plaintiff's work record.

5. Finally, the Court concludes that the plaintiff has not established that the defendant's articulated reason for the discharge was pretextual. The evidence presented at trial clearly demonstrated that UPS discharged Riley solely on the basis of his abysmal work record and that the plaintiff's race was never a cause or factor in the defendant's decision to terminate Riley. 1 The Court concludes that the evidence at trial clearly demonstrated that it was Riley's conduct



and not his race that led to his many warnings and eventual discharge.

---

1/. Because the Court has concluded that the plaintiff has established a prima facie case, the Court will deny the defendant's motion for involuntary dismissal raised at trial. The Court will sustain plaintiff's objection to defendant's introduction at trial of twelve arbitration decisions involving interpretation of the UPS Collective Bargaining Agreement. The Court sustains plaintiff's objection on relevancy grounds.

An Order consistent with this Memorandum Opinion will be entered.





IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MALCOLM T. RILEY, II, :  
:   
Plaintiff, :   
: Civil Action No.   
: 83-811-JJF   
v. :   
:   
UNITED PARCEL SERVICE, :   
:   
Defendant. :

O R D E R

At Wilmington this 30th day of June,  
1988, for the reasons set forth in the  
Memorandum Opinion issued this date,

IT IS ORDERED THAT Judgment is  
entered for the defendant United Parcel  
Service.

Joseph J. Farnan, Jr.  
United States District Judge